

ESTTA Tracking number: **ESTTA684727**

Filing date: **07/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	PepsiCo, Inc.
Granted to Date of previous extension	07/19/2015
Address	700 Anderson Hill Road Purchase, NY 10577 UNITED STATES
Attorney information	Paul A. Lee PepsiCo, Inc. 700 Anderson Hill Road Purchase, NY 10577 UNITED STATES trademarks@pepsico.com, paul.lee@pepsico.com, donna.j.sanders@pepsico.com Phone:914-253-3443

**Applicant Information**

Application No	86425126	Publication date	01/20/2015
Opposition Filing Date	07/20/2015	Opposition Period Ends	07/19/2015
Applicant	ENCELADUS IP HOLDINGS LLC 7707 CROSSOVER DRIVE MCLEAN, VA 22102 UNITED STATES		

**Goods/Services Affected by Opposition**

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer application software for mobile phones, computers, tablet computers, handheld computers and devices, namely, software for scanning or reading a unique visual or design code in the field of product authentication, product tracking, product distribution control, and counterfeit detection to alert manufacturers and consumers as to whether a product is genuine or counterfeit</p>
<p>Class 038. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Provision of access to data or documents stored electronically in central files for remote consultation; Wireless electronic transmission of data</p>
<p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Application service provider featuring application programming interface (API) software for the purchase of unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Computer modeling services; Computer-aided design services; Platform as a service (PAAS) featuring computer software platforms for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D print-</p>

ing, ink printing, laser etching, and digital display; Providing an online non-downloadable Internet-based system application featuring technology enabling users to purchase unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for purchasing and generating unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D printing, ink printing, laser etching, and digital display

Class 045. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Anti-counterfeiting consulting in the fields of product and document authentication and tracking, and brand monitoring and protection, to protect against counterfeiting, tampering, and diversion, and to ensure the integrity of genuine products and documents

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3729650	Application Date	10/06/2008
Registration Date	12/22/2009	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a globe device containing three fields; the first field is red, the second field is white, the third field is blue, and a white border surrounds the globe device. The black in the drawing represents background and/or transparent areas and is not part of the mark.		
Goods/Services	Class 025. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 Hats; Sweat shirts; T-shirts		

U.S. Registration No.	3729649	Application Date	10/06/2008
Registration Date	12/22/2009	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a globe device containing three fields whereby the middle field divides the globe and the globe device is surrounded by a border.		
Goods/Services	Class 025. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 Hats; Sweat shirts; T-shirts		

U.S. Registration No.	3703309	Application Date	11/24/2008
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of a tan globe device containing three fields whereby the middle field divides the globe. The background is brown.
Goods/Services	Class 032. First use: First Use: 2009/03/02 First Use In Commerce: 2009/03/02 Soft drinks

U.S. Registration No.	3670829	Application Date	10/06/2008
Registration Date	08/18/2009	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
Description of	The mark consists of a globe device containing three fields whereby the middle

Mark	field divides the globe and the globe device is surrounded by a border.
Goods/Services	Class 032. First use: First Use: 2008/12/00 First Use In Commerce: 2008/12/00 Concentrates, syrups or powders used inthe preparation of soft drinks; Soft drinks

U.S. Registration No.	3655850	Application Date	10/06/2008
Registration Date	07/14/2009	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark			
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Description of Mark	The mark consists of a globe device containing three fields; the first field is red, the second field is white, the third field is blue, and a white border surrounds the globe device. The black in the drawing represents background and/or transparent areas and is not part of the mark.
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Goods/Services	Class 032. First use: First Use: 2008/12/00 First Use In Commerce: 2008/12/00 Soft drinks
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U.S. Registration No.	3045794	Application Date	11/24/2004
Registration Date	01/17/2006	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2001/01/00 First Use In Commerce: 2001/01/00 SOFT DRINKS

U.S. Registration No.	1832264	Application Date	02/14/1992
Registration Date	04/19/1994	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of	NONE

Mark	
Goods/Services	Class 025. First use: First Use: 1992/04/00 First Use In Commerce: 1992/04/00 T-shirts[and hats]

U.S. Registration No.	1746553	Application Date	09/30/1991
Registration Date	01/12/1993	Foreign Priority Date	NONE

Word Mark	NONE
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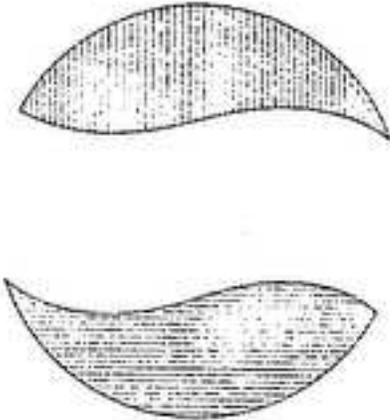


Description of Mark	NONE
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Goods/Services	Class 032. First use: First Use: 1992/01/01 First Use In Commerce: 1992/01/01 soft drinks
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U.S. Registration No.	824153	Application Date	09/09/1966
Registration Date	02/14/1967	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1963/09/03 First Use In Commerce: 1963/09/03 SOFT DRINKS

Attachments	77586704#TMSN.png( bytes ) 77586701#TMSN.png( bytes ) 77620884#TMSN.png( bytes ) 77585966#TMSN.png( bytes ) 77585961#TMSN.png( bytes ) 78522372#TMSN.png( bytes ) 74246392#TMSN.png( bytes ) 74207774#TMSN.png( bytes ) 72254100#TMSN.png( bytes ) Notice of Opposition - Enceladus Globe Design.pdf(409389 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Paul A. Lee/
Name	Paul A. Lee
Date	07/20/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF APPLICATION**

Mark : Miscellaneous Globe Design  
Applicant : Enceladus IP Holdings LLC  
          : (Assignee of Wallace Penn Dunlop Scott)  
Serial No. : 86/425,126  
Filed : October 15, 2014  
Published in  
the Official Gazette : January 20, 2015

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PEPSICO, INC.,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
ENCELADUS IP HOLDINGS LLC,	:	
	:	
Applicant.	:	
_____	x	

**NOTICE OF OPPOSITION**

Opposer, PepsiCo, Inc. ("PepsiCo" or "Opposer"), a North Carolina corporation having a place of business at 700 Anderson Hill Road, Purchase, New York 10577, believes that it will be damaged by the registration of United States Trademark Application Serial No. 86/425,126, filed on October 15, 2014, in the name of Enceladus IP Holdings LLC (hereinafter "Applicant") for a miscellaneous circle or globe design divided into four sections based on an alleged intention to use the mark on or in connection with "Computer application software for mobile phones, computers, tablet computers, handheld computers and devices, namely, software for scanning or reading a unique visual or design code in the field of product authentication, product tracking, product distribution control, and counterfeit detection to alert manufacturers and consumers as to

whether a product is genuine or counterfeit” in International Class 9; Provision of access to data or documents stored electronically in central files for remote consultation; Wireless electronic transmission of data in International Class 38; “Application service provider featuring application programming interface (API) software for the purchase of unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Computer modeling services; Computer-aided design services; Platform as a service (PAAS) featuring computer software platforms for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D printing, ink printing, laser etching, and digital display; Providing an online non-downloadable Internet-based system application featuring technology enabling users to purchase unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for purchasing and generating unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D printing, ink printing, laser etching, and digital display” in International Class 42; and “Anti-counterfeiting consulting in the fields of product and document authentication and tracking, and brand monitoring and protection, to protect against counterfeiting, tampering, and diversion, and to ensure the integrity of genuine products and documents” in International Class 45. Having

been previously granted an extension of time to oppose, PepsiCo hereby opposes the foregoing application.

The specific grounds for this opposition are as follows:

1. PepsiCo, through its predecessors-in-interest, subsidiaries and/or affiliates, has been engaged in the food and beverage business for over 130 years and 100 years, respectively, and has become well and favorably known to members of the public, as well as to members of the food and beverage industry, for quality food and beverage products and related services, and owns a portfolio of brands that identify carbonated soft drinks, juices and juice drinks, ready-to-drink teas and coffee drinks, isotonic sports drinks, bottled water and enhanced waters, as well as breakfast and snack foods and related products and services.

2. Since at least as early as 1944, PepsiCo has continuously used throughout the United States a highly distinctive circle or globe device containing three fields with the middle being a wave-like element in connection with the marketing, advertising, distribution and sale of a wide variety of goods and services, including as a mark to identify its iconic PEPSI brand of carbonated soft drinks, as well as advertising, marketing, sales and promotional services to authorized bottlers and independent distributors and retailers of those products. Consumers have come to understand that this logo, featured below in its modern incarnation, signifies a single source, namely, PepsiCo:



Hereinafter PepsiCo's globe devices shall individually and/or collectively be referred to as the "Globe Design".)

3. Since long prior to the filing date of the application-at-issue, PepsiCo's Globe Design mark has been identified with Opposer and has appeared on a tremendous amount of product packaging, advertising, in-store display racks, signage, point-of purchase material, etc.

4 Opposer's products bearing the Globe Design mark are marketed and sold in vast quantities on a nationwide basis, supported by hundreds of millions of dollars of advertising and promotion each year. Indeed, PepsiCo has sold many billions of dollars' worth of products under its Globe Design in the United States alone, not to mention around the world, and has spent many hundreds of millions of dollar advertising and promoting such products domestically. Opposer's products sold under the Globe Design mark are sold in almost every supermarket in the United States as well as in mass merchandise stores, numerous convenience stores, vending machines, and other outlets.

5. The extensive commercial acceptance and success of many of Opposer's products bearing the Globe Design mark for many decades is due in large measure to the substantial advertising and marketing efforts of PepsiCo. Such efforts have included the use of celebrities and artists to advance and promote its products. PepsiCo has, by virtue of such extensive usage, advertising and promotion, built up a very high level of consumer and trade recognition symbolized by its Globe Design mark.

6. PepsiCo's use of the Globe Design mark also extends beyond beverages, per se, and includes other products and services. Indeed, PepsiCo markets and sells clothing, hats, toys and sporting goods, beverage ware, towels, pens, stationery products, novelty items and other products under the Globe Design mark. The Globe Design mark is also used in various high-

profile entertainment and promotional venues involving sports, popular culture and musical entertainment.

7. PepsiCo also maintains a strong and innovative internet presence through which it markets, advertises and promotes many of the foregoing products and services bearing the Globe Design mark, among others. PepsiCo's websites include Pepsi.com, which is operational twenty-four hours a day, seven days a week. PepsiCo also maintains a Facebook page and YouTube Channel dedicated to promoting the products bearing the Globe Design mark. PepsiCo also markets and promotes its global billion dollar brands, including PEPSI, which is marketed in connection with the Globe Design mark through its corporate site at [www.pepsico.com](http://www.pepsico.com).

8. Due to such extensive and continuous marketing, advertising, sale, use and promotion of soft drinks and related services and products, including snack foods, in connection with Opposer's Globe Design mark for several decades, these marks have not only acquired substantial public and consumer recognition throughout the United States, but have also enjoyed valuable goodwill, and become famous, solely signifying Opposer as the source of products and services of high quality.

9. In addition to its prior common law rights in the Globe Design mark, Opposer is also the owner of numerous live United States trademark registrations, each of which incorporate the Globe Design mark, including, but not limited to, the following:

MARK	REG. NO.	REG. DATE	FIRST USE DATE	IDENTIFICATION OF GOODS
	3729650	Dec. 22, 2009	August 2009	Hats; Sweat shirts; T-shirts, in Class 25
	3729649	Dec. 22, 2009	August 2009	Hats; Sweat shirts; T-shirts, in Class 25

	3703309	October 27, 2009	March 2, 2009	Soft drinks, in Class 32
	3670829	Aug. 18, 2009	December 2008	Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks, in Class 32
	3655850	Jul. 14, 2009	December 2008	Soft drinks, in Class 32
	3045794	Jan. 17, 2006	January 2001	Soft drinks, in Class 32
	1832264	Apr. 19, 1994	April 1992	T-shirts, in Class 25
	1746553	Jan. 12, 1993	Jan. 1, 1992	Soft drinks, in Class 32
	824153	February 14, 1967	September 3 1963; 1944 in a different form	Soft drinks, in Class 32

10. Opposer's registrations for these marks are valid, subsisting, in full force and effect, un-cancelled and unrevoked, and serve as evidence of Opposer's exclusive right to use such marks in commerce on or in connection with the goods or services identified in the registrations, as provided by Section 33(a) of the United States Trademark (Lanham) Act, 15 U.S.C. § 1115(a). Further, many of Opposer's registrations have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065. Hereinafter PepsiCo's foregoing marks,

including those registered and/or used in commerce, are referred to individually and/or collectively as "PepsiCo's Globe Design Marks", unless otherwise specified.

11. Use of PepsiCo's Globe Design Marks has been continuous and they have not been abandoned. As a result of the long, extensive and widespread use, advertising, promotion and registration of PepsiCo's Globe Design Marks on and in association with PepsiCo's various goods and services, including, but not limited to, various beverage products, consumers have become accustomed to associating marks consisting of or containing the PepsiCo Globe Design mark with a single source, that is, PepsiCo.

12. In view of such substantial usage, PepsiCo's Globe Design Marks became famous long prior to the filing date of the application at issue. Indeed, the PEPSI brand, including its Globe Design, is one of the most renowned brands in the United States, if not the world, representing assets of enormous goodwill and of inestimable value to PepsiCo.

13. On information and belief, on October 15, 2014, Applicant, Enceladus IUP Holdings LLC, a North Carolina limited liability company, having a place of business at 7707 Crossover Drive, McLean, VA 22102, filed Application Serial No. 86/425,126 to register a miscellaneous circle or globe design mark divided into four sections (hereinafter "Enceladus Globe Design"), based on an alleged intent to use the mark in connection with "Computer application software for mobile phones, computers, tablet computers, handheld computers and devices, namely, software for scanning or reading a unique visual or design code in the field of product authentication, product tracking, product distribution control, and counterfeit detection to alert manufacturers and consumers as to whether a product is genuine or counterfeit" in International Class 9; Provision of access to data or documents stored electronically in central files for remote consultation; Wireless electronic transmission of data in International Class 38;

“Application service provider featuring application programming interface (API) software for the purchase of unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Computer modeling services; Computer-aided design services; Platform as a service (PAAS) featuring computer software platforms for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D printing, ink printing, laser etching, and digital display; Providing an online non-downloadable Internet-based system application featuring technology enabling users to purchase unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for purchasing and generating unique scannable visual or design codes to be affixed to products and used for product authentication, product tracking, product distribution control, and counterfeit detection; Software as a service (SAAS) services featuring software for the purchase, design, preparation, creation, generation, analysis, editing, optimization, and delivery of digital images, digital image files, and unique scannable visual or design codes for use in additive manufacturing, 3D printing, ink printing, laser etching, and digital display” in International Class 42; and “Anti-counterfeiting consulting in the fields of product and document authentication and tracking, and brand monitoring and protection, to protect against counterfeiting, tampering, and diversion, and to ensure the integrity of genuine products and documents” in International Class 45. Applicant, on information and belief, has not made any use of the Enceladus Globe Design in commerce in or with the United States. Upon information and belief, at the time Applicant filed its application for its purported mark, it was or should have been fully aware of PepsiCo’s

Globe Design Marks and its rights therein, and at a minimum, Applicant had constructive notice of PepsiCo's prior exclusive rights as a result of its many active federal trademark registrations for PepsiCo's Globe Design Marks.

14. Registration of Applicant's alleged mark, which is the subject of the application-in-opposition, is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles PepsiCo's Globe Design Marks (both design marks consist of a circle divided into three or four colored sections by curved lines) which have been in use and are also the subject of prior registrations or previously filed applications to register marks in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged products of the Applicant to cause confusion, mistake or deception.

15. Opposer has priority over Applicant because Opposer's use, application filing dates and/or registration dates for PepsiCo's Globe Design Marks precede the Applicant's filing date for its application at issue and/or any alleged date of first use of Applicant's purported mark which is the subject of the application-in-opposition.

16. Applicant's alleged Enceladus Globe Design mark, which is the subject of the application-in-opposition, and PepsiCo's Globe Design Marks are similar. By way of example only, each is comprised of a circle or globe design that is divided into three or four sections with the middle having a wave-like appearance or impression.

17. The products and services claimed in the application-in-opposition are sufficiently related to the products and services of Opposer that use of the applied for Enceladus Globe Design mark by Applicant on or in connection with such products or services is likely to cause

confusion, mistake or deception among consumers and people in the respective industries with consequent injury to Opposer.

18. Accordingly, Applicant's alleged mark shown in the application-in-opposition so resembles Opposer's foregoing and previously used and/or registered Globe Design Marks as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for Enceladus Globe Design mark with Opposer's use and registration of PepsiCo's Globe Design Marks is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicant and its products are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

19. In view of the foregoing, registration of Applicant's alleged Enceladus Globe Design mark, which is the subject of the application-in-opposition, is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and/or registered Globe Design Marks, as to be likely, when used in connection with the alleged products of the Applicant, to cause confusion, mistake or deception.

20. Further, Opposer's inherently distinctive Globe Design Marks became famous prior to the filing date of Applicant's application-in-opposition and/or any claimed date of first use by Applicant of the alleged mark shown in U.S. Application Serial No. 86/425,126. Registration and use of Applicant's alleged mark would likely dilute Opposer's famous and inherently distinctive Globe Design Marks in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged Enceladus Globe Design mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

21. PepsiCo will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. § 1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of Applicant's alleged Enceladus Globe Design mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of PepsiCo.

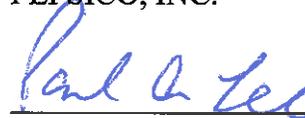
WHEREFORE, Opposer prays that this opposition be sustained entirely in its favor, that registration be denied to Applicant on its Application Serial No. 86/425,126 and that the Board grant all further relief favorable to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

PEPSICO, INC.

Dated: July 20, 2015

By:



Paul A. Lee  
700 Anderson Hill Road  
Purchase, New York 10577  
(914) 253-3443

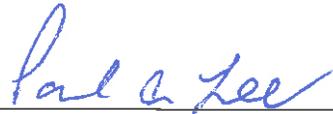
Attorney for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, NOTICE OF OPPOSITION, was served on Applicant at the correspondence address of record via overnight courier, in an envelope with sufficient postage addressed to:

TRINA A. LONGO  
SCHIFFRIN & LONGO, P.C.  
8201 GREENSBORO DR STE 300  
MC LEAN VA , 22102-3814

on July 20, 2015

By:   
Paul A. Lee